

Bryan Blaney
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Attorneys for Defendant
Environmental Energy Recycling Corporation, LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TRI-STATE BIODIESEL, LLC,

Plaintiff,

Civil Case No.:
08-CIV-2997

v.

ENVIRONMENTAL ENERGY RECYCLING
CORPORATION, LLC.

Defendant.

**NOTICE OF MOTION TO
EXTEND THE TIME FOR
ENVIRONMENTAL ENERGY
RECYCLING CORPORATION,
LLC TO FILE ANSWERS TO
THE COMPLAINT**

RETURN DATE

-----X

TO: Joshua Sabo, Esq.
287 North Greenbush Road
Troy, New York 12180
Attorney for Plaintiff

SIR/MADAM:

PLEASE TAKE NOTICE that the undersigned, attorneys for defendant, Environmental Energy Recycling Corporation, LLC (“Defendant”), shall move on these papers, or as soon hereafter as counsel may be heard, before the United States District Court, Southern District of New York, for an Order, pursuant to R. 4:6-1(c), extending the time for Defendant to file the responsive pleading to plaintiff’s Complaint, which is submitted herewith.

PLEASE TAKE FURTHER NOTICE that, in support of this application, Defendant shall rely upon the letter to the Court dated June 9, 2008. A proposed form of Order is also submitted

herewith.

PLEASE TAKE FURTHER NOTICE that Defendant's request is submitted with consent by Plaintiff and, accordingly, no oral argument is requested.

NORRIS, McLAUGHLIN & MARCUS
A Professional Corporation
Attorneys for Defendant
Environmental Energy Recycling Corporation, LLC

/s/ Bryan Blaney
BRYAN BLANEY

Dated: June 13, 2008

CERTIFICATION OF SERVICE

I hereby certify that the foregoing Notice of Motion, Certification of Bryan Blaney, Letter and proposed form of Order were submitted, via Electronic filing to the Clerk of the United States District Court, Southern District of New York, 500 Pearl Street, New York, New York 10007. Copies were forwarded to counsel for Plaintiff via the same method. I further certify that “hard” copies of the filings were also served upon Counsel for Plaintiff via overnight delivery, at the addresses indicated on the Notice of Motion.

NORRIS, McLAUGHLIN & MARCUS
A Professional Corporation
Attorneys for Defendant
Environmental Energy Recycling Corporation, LLC

/s/ Bryan Blaney
BRYAN BLANEY

Dated: June 13, 2008

Norris
McLaughlin
& Marcus, P.A.
ATTORNEYS AT LAW

June 13, 2008

By Facsimile (212-805-6717)

Honorable Richard M. Berman
United States District Court
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

RE: Tri-State Biodiesel, LLC v. Environmental Energy Recycling Corp,
LLC; Docket No 08 CV 2997 (RMB)

Dear Judge Berman:

As your Honor may be aware, this firm represents the defendant, Environmental Energy Recycling Corp., LLC in the above- captioned case. Please accept this letter as support for my request to extend the time for defendant's Answer the complaint which is submitted with this letter.

The delay resulted from discussions with my client, and with counsel for the plaintiff (both prior to and immediately following the case management conference), in which we explored the prospect of resolution of the underlying dispute without litigation. Counsel each noted that the amount in dispute, even as alleged in the complaint, is not so substantial (indeed, only about twenty thousand dollars above the jurisdiction threshold), and that efforts to evaluate negotiated disposition without further costs of litigation warranted consideration. Notably, plaintiff's counsel produced documents well in advance of the discovery schedule, and upon only verbal request from undersigned counsel. Additionally, and in a discussion following the Case Management conference, undersigned counsel raised the possibility of an informal "mediation" session that undersigned counsel offered to host and during which plaintiff and defendant company principals would attend.

The invitation was relayed by plaintiff's counsel to his client. My understanding is that they discussed the prospect, and evaluated possible dates, but ultimately decided



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Norris McLaughlin & Marcus, P.A.

Honorable Richard M. Berman

June 13, 2008

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to decline the invitation. I received notice of that decision in a telephone conversation with plaintiff's counsel, Joshua A Sabo, Esq., in the afternoon of Wednesday, June 4, 2008, at which time I drafted the Answer and Counterclaim and forwarded same to the defendant principal for his review. Because of my client's work and travel schedule, he was unable to review the document and contact me with his edits and instructions for revisions until today.

Notably, I can represent that, during my conversation with Mr. Sabo, I also requested and received consent to this application. Accordingly, the Answer, Affirmative Defenses and Counter-Claims on behalf of defendant Environmental Energy Recycling Corporation, LLC are enclosed with this submission, with defendant's petition that they are accepted for filing.

Respectfully submitted,

NORRIS, McLAUGHLIN & MARCUS, PA

By: /s/ Bryan Blaney
Bryan Blaney

BB:lw

cc: Joshua A. Sabo, Esq.
Ralph Tammaso

Bryan Blaney
NORRIS MCLAUGHLIN & MARCUS
875 Third Avenue, 18th Floor
New York, New York 10022
Telephone (212) 808-0700
Attorneys for Defendant
Environmental Energy Recycling Corporation, LLC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TRI-STATE BIODIESEL, LLC,

Plaintiff,

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ENVIRONMENTAL ENERGY RECYCLING
CORPORATION, LLC.

PROPOSED ORDER

Defendant.
-----X

This matter having been brought before the Court by Norris, McLaughlin & Marcus,
(Bryan Blaney, Esq. appearing), and on notice to Counsel of Record in the above-captioned
matter case, and

Upon review of the letter submitted by counsel; and
Consent of the plaintiff

IT IS ON THE _____ day of _____, 2008;

ORDERED

that the time for the Defendant to file its response to the Complaint, Affirmative Defenses and Counter-Claims is extended until June 13 2008.

Dated:

Honorable Richrad M. Berman
United States District Judge